

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Cellular Service and Other Commercial Mobile)	WT Docket No. 97-112
Radio Services in the Gulf of Mexico)	
)	
Amendment of Part 22 of the Commission's)	CC Docket No. 90-6
Rules to Provide for Filing and Processing)	
of Applications for Unserved Areas in)	
the Cellular Service and to Modify Other)	
Cellular Rules)	
To: The Commission		

**ALLTEL COMMUNICATIONS, INC. OPPOSITION TO PETITION FOR
RECONSIDERATION**

Pursuant to Section 1.429(f) of the Commission's rules, 47 C.F.R. § 1.429(f), ALLTEL Communications, Inc. ("ALLTEL") hereby opposes the Petition for Partial Reconsideration filed by Petroleum Communications, Inc. ("PetroCom") in the above-captioned proceeding.¹ The Commission should deny the PetroCom Petition in all respects and, particular, must affirm its decision in the *Report and Order* to retain the 28 dBu service area boundary ("SAB") contour standard for Gulf cellular licensees and the 32 dBu SAB contour standard for land-based licensees.

DISCUSSION

I. The Court Did Not Vacate the Commission's Rules Entitling Gulf Carriers to a 28 dBu SAB Contour

PetroCom's arguments are premised largely on the mistaken assumption -- not raised until late in the rulemaking proceeding -- that the court's decision in *Petroleum Communications*,

Inc. v. FCC necessarily resulted in a 39 dBu SAB contour formula for GMSA licensees, rather than the 28 dBu formula specified in the rules. In that decision, the D.C. Circuit addressed PetroCom's arguments that "the FCC's new rules arbitrarily confine[] the water-based GMSAs to existing areas of actual reliable service, thus failing to differentiate between water-based and land-based licensees despite the substantially different circumstances faced by waterborne carriers."² The court held in favor of PetroCom on this issue, and "remand[ed] the question whether GMSAs should be circumscribed to areas of actual reliable service to the Commission for reconsideration."³ On remand, the Commission adopted a note to Section 22.911(a) of the rules which noted that the court vacated the rules "insofar as they apply to cellular systems licensed to serve the [GMSA]" and concluded that "*the authorized CGSAs* of the cellular systems licensed to serve the GMSA are those which were authorized prior to January 11, 1993." PetroCom's CGSA was ultimately expanded to the entire GMSA by the *Report and Order*.

The court's words and the Commission's actions demonstrate that the CGSA, *not* the SAB formula itself, was at issue, and the Commission's decision on remand to return the CGSA of the Gulf to geographically defined boundaries both addressed the court's concerns and rendered the propagation formula immaterial to the GMSA CGSA definition. The Commission did not, contrary to PetroCom's strained interpretation, determine that the 39 dBu SAB contour standard that existed prior to the *Unserved Area Third Report and Order* should continue to apply to Gulf carriers after the court's remand. Neither the court nor the Commission took issue with the GMSA SAB propagation formula which, interestingly, is based on data submitted by

¹ Petition for Partial Reconsideration, Petroleum Communications, Inc., in WT Docket No. 97-112 and CC Docket No. 90-6, filed April 3, 2002 ("PetroCom Petition").

² *Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164, 1171 (D.C. Cir. 1994).

³ *Id.* at 1172.

PetroCom itself.⁴ The Commission's implementation of the court's remand, and its subsequent adjudication of Gulf disputes, assumed that the 28 dBu SAB formula applies to Gulf licensees.⁵ Moreover, as ALLTEL noted, PetroCom's arguments are contrary to long-established engineering practice in the Gulf.⁶ The Commission's determination that "[t]he Gulf carriers have been using the water formula to depict SAB contours for their facilities operating in the Gulf since the formula was adopted, while the land carriers have used the land-based formula for their facilities" is thus well-founded.⁷

Under PetroCom's view, GMSA carriers have been entitled to a *stronger* signal strength at the coastline than land-based carriers (39 dBu versus 32 dBu, respectively). This absurd result would have been contrary to the undisputed record regarding radio propagation over water.⁸ As demonstrated above, the court was concerned for the territorial scope of the GMSA and the Gulf carriers' potential loss of their CGSA. The Commission adequately addressed this concern in the *Report and Order* by geographically defining the GMSA CGSA to include the entire Gulf and by maintaining the GMSA border at the coastline. The FCC authorized Gulf carriers to provide

⁴ See *Unserved Area Third Report and Order*, 7 FCC Rcd. 7183, 7184 (1992).

⁵ *Bachow/Coastel, L.L.C. v. GTE Wireless of the South, Inc., Order*, 15 FCC Rcd. 4484 (Enf. Bur. 2000). In this dispute, Bachow/Coastel utilized the 28 dBu SAB formula. See File No. 0000188467. The Commission's licensing records are replete with similar examples. See, e.g., File No. 0000123055. The Commission should thus summarily reject PetroCom's assertion that "[e]xisting relationships between carriers . . . are based upon the principle that the parties should use the same 32 dbu land formula for their respective contours." See PetroCom Petition at 16.

⁶ See ALLTEL Communications, Inc. *Ex Parte* Presentation, filed Oct. 10, 2001, at 2. Even PetroCom itself states that "existing co-location or extension agreements . . . provide that Gulf and land carriers *use the same formula*" which, if true, would necessarily entail both parties using the 32 dBu standard applicable to land carriers – not the 39 dBu standard. See PetroCom Petition at 18.

⁷ *Report and Order* ¶ 36.

⁸ Indeed, the court acknowledged the propriety of the Commission's differing SAB formulas for Gulf- and land-based carriers. 22 F.3d at 1172 (noting "[t]he Commission did adjust the reliable-
(continued on next page)

service throughout the Gulf of Mexico Exclusive Zone regardless of the location of their cell sites at any particular time.⁹ Given that (1) PetroCom has been given its CGSA to the edge of the coastline in the Western Gulf, and (2) the Commission has eliminated the “use it or lose it” provisions of its previous unserved area requirements, the Commission should not countenance PetroCom’s effort to bolster its bargaining position with land-based carriers or to provide land-based carriers with less protection from Gulf-based signals.

II. PetroCom’s Administrative Procedure Act Arguments Are Meritless

In the *Second Further Notice of Proposed Rulemaking*, the Commission reaffirmed its intent to establish “formulas for calculating SABs *that reflect reliable service coverage*” and, based on its proposed adoption of a hybrid “Coastal Zone,” sought “comment on *whether* a hybrid formula should be adopted for determining reliable coverage for signals that extend partially over water and partially over land” and “specific formulas that would adequately reflect *the reliable service area* of such combination land-water transmitters.”¹⁰ Nowhere in the record do parties contend that the 28 dBu and 32 dBu SAB formulas do not “reflect reliable service coverage,” and the Commission’s “conclu[sion] that the two-formula approach adequately accounts for the different characteristics of signal propagation over land and water” is supported in the record underlying the *Report and Order* and previous decisions in this proceeding. The

service formula for water-based systems to account for different radio wave propagation properties over water.”)

⁹ *Report and Order* ¶ 31. Indeed, PetroCom proves too much, acknowledging that “the Commission ultimately decided *not* to use SAB contours to define the Gulf Carriers’ protected service areas, meaning that SAB contours have lost the relevance they had in the [*Second FNPRM*], *i.e.*, to define existing CGSAs and identify unserved areas available for Phase II processing.”

¹⁰ *Second Further Notice of Proposed Rulemaking*, WT Docket No. 97-112, CC Docket No. 90-6, 12 FCC Rcd. 4578, ¶¶ 37-38 (1997) (emphasis added).

soundness of the Commission's decision is particularly clear given its decision to not adopt a Coastal Zone for the Western Gulf.¹¹

The Commission expressly left open the possibility that the two existing SAB formulas for land- and Gulf-based sites would be retained, and as such the Commission's decision is plainly a logical outgrowth of the *NPRM*.¹² Moreover, the Commission retains considerable discretion in resolving technical and spectrum management matters such as this.¹³ The Commission addressed the multiple and conflicting technical showings, as well as changed circumstances during the course of the proceeding.¹⁴

PetroCom offers no basis for concluding that the Commission did not establish a "rational connection between the facts found and the choice made."¹⁵ PetroCom bootstraps onto an engineering report submitted by Bachow/Coastel, as well as excerpts of other land-based carriers' filings – which were submitted in the context of the Commission adopting a Coastal Zone – as "uncontroverted evidence . . . that the land formula gave carriers an unfair signal

¹¹ *Report and Order* ¶ 36.

¹² See *Omnipoint Corp. v. FCC*, 78 F.3d 620, 631 (D.C. Cir. 1996). PetroCom's assertion that the Commission in the *Second FNPRM* "acknowledged that the current two-formula approach *did not* adequately account for the different characteristics of signal propagation over land and water" is thus flatly wrong.

¹³ See, e.g., *Federal Power Comm'n v. Florida Power & Light Co.*, 404 U.S. 453, 463 (1972) (when agency makes a decision in the face of disputed technical facts, "[a] court must be reluctant to reverse results supported by . . . a weight of considered and carefully articulated expert opinion"); *Cellular Phone Taskforce v. FCC*, 205 F.3d 82 (2d Cir. 2000); *Achernar Bdcasting Co. v. FCC*, 62 F.3d 1441 (D.C. Cir. 1995) ("[t]he FCC's discretion is particularly great when the issues involve technical matters and questions about priorities in usage of the radio spectrum.") (citing *Loyola Univ. v. FCC*, 670 F.2d 1222, 1226 (D.C. Cir. 1982)); *Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428, 443-45 (D.C. Cir. 1991); *Nat'l Ass'n of Broadcasters v. FCC*, 740 F.2d 1190, 1209-14 (D.C. Cir. 1984); *Telocator Network of Am. v. FCC*, 691 F.2d 525, 538 (D.C. Cir. 1982).

¹⁴ *Report and Order* ¶¶ 21-34.

¹⁵ See *Motor Vehicle Mfrs. Ass'n v. State Farm Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks omitted).

strength advantage in coastal areas vis-à-vis the Gulf carriers”¹⁶ ALLTEL and other land-based carriers, however, submitted considerable data to the contrary. Bachow/Coastel itself, moreover, opposed a hybrid formula as “administratively unwieldy and unnecessarily complex.”¹⁷

The Commission did, in fact, discuss and consider all parties’ proposals, including PetroCom’s and ALLTEL’s.¹⁸ As PetroCom itself recommended, the Commission did not adopt a Coastal Zone in the Western Gulf, instead defining PetroCom’s CGSA as the GMSA and relying on negotiations between carriers – thus giving PetroCom the RF interference protection from land-based carriers it requires for reliable service. Simply put, the Commission’s decision not to impose a “hybrid” coastal zone rendered it unnecessary to adopt a hybrid SAB formula.¹⁹ PetroCom cannot have it both ways, and the Commission should deny the Petition.

CONCLUSION

The Commission in the *Report and Order*, by accounting for and balancing land-based carriers’ needs to deploy a reliable signal to customers in their coastal areas, while expanding and making permanent Gulf carriers’ geographically-based CGSAs, adopted a workable approach to resolving the myriad of disputes that have plagued cellular licensing in the Gulf of Mexico for well over a decade. PetroCom’s attempts to disturb that balance and gain advantage

¹⁶ PetroCom Petition at 11.

¹⁷ Bachow/Coastel Reply Comments at 19.

¹⁸ *Report and Order* ¶¶ 21-34.

¹⁹ The Commission thus rendered moot PetroCom’s proposal that “land-based carriers be allowed to expand their SAB contours into unserved portions of the Gulf but also required to pull back if a Gulf carrier sought to serve the area.” *See Report and Order* ¶ 24.

by seeking increased signal strength at the GMSA border should not be countenanced. The Commission should affirm the *Report and Order* and deny PetroCom's Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Joy M. Taylor, hereby certify that copies of the foregoing Opposition to Petition for Reconsideration have been served this 23rd day of May, 2002, by first class United States mail, postage prepaid, on the following:

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